Remarks/Arguments

Claims 78, 83, 88, 90, 92-97 and 115-128 are pending in the present application. In the present Amendment, claims 78, 83, 88, 90, 92-97 and 115-128 have been canceled without prejudice or disclaimer. New claims 129-142 have been added. No new matter has been introduced into the present application by the addition of the new claims. Reconsideration of the present application is respectfully requested in view of the following remarks.

Applicants have canceled all of the non-elected claims that were withdrawn from consideration in the office action. The cancellation of these claims is without prejudice to applicant's right to pursue these claims in one or more divisional applications.

The objection to claims 78 and 115-118 has been rendered moot by the cancellation of these claims and the addition of the new claims.

The rejection of claims 88, 90, 92, 93 and 119-128 under 35 U.S.C. 103(a) as being unpatentable over Beres et al. in view of Lombardy et al. or Niazi et al. is respectfully traversed for the reasons set forth below.

The Examiner has taken the position that Beres et al. discloses effervescent granules composed primarily of equal parts of malic acid and mannitol and an alkaline ingredient and that it would have been obvious to use the effervescent granules of Beres et al. to prepare an effervescent chewing gum in view of the teachings of Lombardy et al. or Niazi et al. The Examiner has apparently realized that Beres et al. does not teach the relative amounts of the water-soluble crystalline compound (e.g., mannitol) and acidulent (e.g., malic acid) that are recited in the claims of the present application. To overcome this deficiency in the teachings of Beres et al., the Examiner has taken the completely unsupported position that finding the optimum amount of each component of the effervescent granules would require nothing more than routine experimentation by one of reasonable skill in this art. As explained below, the Examiner's position is contrary to the law and to the factual situation presented here.

The present claims are directed to pharmaceutical products, food products or confectionery products that contain a co-processed composition comprising at least one water-soluble compound selected from a certain group of compounds and at least one acidulent selected from a group of acidulents. The co-processed composition is clearly defined in the claims as comprising from 80 to 99 percent by weight of the at least one water-soluble compound and from 1 to 20 percent by weight of the at least one acidulent. Nowhere in Beres et al. is this co-processed composition disclosed or suggested. In contrast, Beres et al. teaches a composition that contains, in its broadest embodiment, 20 to 50% by weight of mannitol and from 9 to 27% by weight of malic acid. There is no suggestion at all in Beres et al. that it would be desirable or even possible to increase the amount of mannitol to 80% by weight or more. In contrast, Beres et al. teaches that the preferred compositions of their invention should contain less mannitol (i.e., 30 to 40% by weight). It is absurd to argue that one of skill in this art, without any suggestion from the Beres et al. patent itself, would modify the composition of that patent by doubling the

amount of mannitol. Such a modification would have to come at the expense of the other critical ingredients in the formulation of Beres et al., such as the acidic component, the basic component, the sweetening agent and the other listed ingredients. There is no teaching in Beres et al. that the amounts of these other components can be drastically reduced while still obtaining the properties that are the goal of the Beres et al. patent (e.g., the required amount of effervescence). Without such a teaching or suggestion, there is no basis in the law to say that such a modification is within the realm of optimization. It is axiomatic that the Examiner cannot ignore the restrictions and/or requirements of a reference in an effort to make its teachings fit the claimed invention of the application under examination.

The secondary references were only cited for their teachings concerning effervescent chewing gums. Accordingly, since their teachings are not relevant to the composition of the co-processed composition that is recited in the present claims, it is believed that any permissible combination of these references with the Beres et al. patent cannot result in the invention of the present claims.

In view of the above remarks, it is respectfully submitted that the present claims are in condition for allowance. Accordingly, issuance of a Notice of Allowability directed to the presently pending claims is respectfully requested.

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Respectfully submitted,

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